

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5088 OF 2005

Mr.Bhalchandra R. Kanade : Petitioner

V/s.

Mr.Rajesh R. Kanade & Ors. : Respondents

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Ms Gauri Jadhav for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondent
no.6.

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CORAM : S.A. BOBDE, J.

August 3, 2005.

P.C.:

1. Mentioned. Not on board. Upon mentioning the matter,
taken up on board.

2. The petitioner has challenged the order dated
27.7.2005 passed by the Civil Judge, Junior Division,
Lanja I/C. Rajapur. By the impugned order, the learned
Civil Judge, Junior Division, has rejected the
petitioner's prayer for setting aside the election of the
Sarpanch.

3. The petitioner has challenged the election of the

respondent nos.1, 2 and 3 as members of the Gram Panchayat, Moroshi, Dist. Ratnagiri. The petitioner's Election Petition, being Election Petition no.1 of 2005, is pending before the Civil Judge, Junior Division, Lanja.

4. During the pendency of the election petition, election to the post of Sarpanch has been notified. The election is due to be held tomorrow i.e. on 4.8.2005. The petitioner, therefore, applied for an injunction to restrain the Collector from holding elections to the post of Sarpanch. He also sought an injunction restraining the respondent nos.1 to 3 from working as members of the Gram Panchayat till the disposal of the petition. The learned trial Judge has rejected this application. In my view, there is no reason to interfere with the impugned order. It is a settled law that ordinarily Courts shall not restrain an elected candidate from functioning as such unless the election is set aside by a competent Court. Admittedly, the election of the respondent nos.1 to 3 have not been set aside. Therefore, there is no reason to restrain them from functioning as members of the Gram Panchayat. There is also no reason, therefore, for restraining the Collector from holding elections to the post of Sarpanch.

5. The learned counsel for the petitioner submitted that the pendency of the Election Petition ought to disentitle the respondent nos.1 to 3 from casting their votes as members of the Gram Panchayat. This submission is not correct and is not supported by any provision of law.

6. Having regard to over all circumstances, I find no reason to interfere with this petition which is hereby dismissed. The Election Petition shall be decided, as expeditiously as possible, and, in any case, not later than three months from today.

Sd/-

S.A. BOBDE, J.